

## DEPARTMENT OF LABOR ISSUES DRAFT COBRA SUBSIDY EXTENSION NOTICES

On December 17, 2009, Congress passed legislation that extends eligibility for the 65 percent COBRA premium subsidy to employees who are involuntarily terminated during the first two months of 2010 (previously, only employees terminated by December 31, 2009 were eligible), and increases the maximum subsidy period to 15 months. The longer subsidy period (it was previously 9 months) applies retroactively, and health plan administrators must provide a supplemental notice to affected individuals no later than February 17, 2010.

The Department of Labor has now issued draft model notices that can be used by health plan administrators to fulfill their new notice obligations. The draft notices may be accessed at <http://www.jaeckle.com/COBRANotices>

### **Background**

To help laid off employees and their families maintain group health coverage, Congress provided for a partial governmental subsidy of COBRA premiums in the American Recovery and Reinvestment Act (ARRA), the economic stimulus law passed in February 2009. (See our Client Alert at [www.jaeckle.com/COBRA2009](http://www.jaeckle.com/COBRA2009).) The original COBRA subsidy (1) was available to any individual who lost group health coverage due to an involuntary termination of employment between September 1, 2008 and December 31, 2009, (2) was equal to 65% of the regular COBRA premium, and (3) could last as long as 9 months.

Last month, with the economy still lagging and the original subsidy eligibility period set to expire, Congress took action. It included in the 2010 Department of Defense Appropriations Act (DODA Act) provisions that extend the eligibility period for the subsidy to February 28, 2010 (that is, the subsidy will be available to employees involuntarily terminated on or before February 28, 2010), and increase the maximum subsidy period to 15 months. The new law provides that the longer subsidy period applies retroactively, and that health plan administrators must provide a supplemental notice to affected individuals no later than February 17, 2010. Administrators must also provide amended notices to any new qualified beneficiaries who become eligible for COBRA through such date.

### **DOL Issues Draft Model Notices**

The Department of Labor has now released draft model notices that can be used by health plan administrators to fulfill these new notice obligations. As they did when ARRA established the original COBRA subsidy, the Department has provided three separate model notices.

### **Updated General Notice**

The amended "General Notice" is for use by health plans that are subject to the COBRA continuation provisions under Federal law. (The Federal COBRA law generally does not apply

to employers with fewer than 20 employees.) The General Notice must be provided to all COBRA “qualified beneficiaries” who experience a qualifying event through February 28, 2010.

The Department has updated the version of this model notice published last year so that it includes all of the information related to the premium subsidy and other rights and obligations under ARRA, as amended by the DODA Act. The amended General Notice also includes all of the information required in an election notice under the Department’s final COBRA notice regulations; accordingly, using this model notice with respect to any individual who has experienced a qualifying event from September 1, 2008 through February 28, 2010 will satisfy the Department’s prior requirements for COBRA election notices, as well as those imposed by ARRA, as amended by the DODA Act.

#### Updated Premium Assistance Extension Notice

The new “Premium Assistance Extension Notice” is for use by health plans that are subject to the COBRA continuation provisions under either Federal or State law. The Premium Assistance Extension Notice may be used for the following purposes:

- It provides notice of the extension of the maximum COBRA subsidy period from 9 to 15 months for individuals who were already receiving the subsidy as of October 31, 2009.
- It provides notice of the extension to individuals who became “assistance eligible individuals”, or who experienced a qualifying event that was the termination of a covered employee’s employment, on or after October 31, 2009, but who were provided a notice that did not include the information required under the DODA Act. Notices for these individuals must be provided by February 17, 2010 (60 days after the date of enactment of the DODA Act).
- It may be used to satisfy the requirement to notify “transition period” individuals of their right to reinstate COBRA coverage by making a retroactive, reduced payment. It appears - it is still not entirely clear who falls under the transition period rules - that an individual is in a “transition period” under the DODA Act if he or she has received the full 9 months of premium assistance required under ARRA and either did not make any payment for subsequent periods of coverage or made payment of the full premium (without the subsidy). This notice, it further appears, also must be provided by February 17, 2010.

#### Updated Alternative Notice

The amended “Alternative Notice” must be sent by health insurance issuers that provide group health insurance coverage that is subject to comparable continuation coverage requirements under State law. The Alternative Notice must be provided to all qualified beneficiaries who have experienced a qualifying event with respect to such coverage through February 28, 2010.

#### **Other New Guidance**

In addition to the draft model notices, the Department has published updated FAQs, a COBRA subsidy fact sheet and other new materials on its website (see [www.dol.gov/cobra](http://www.dol.gov/cobra)).

If you have any questions about the COBRA premium subsidy, please contact Robert W. Patterson at 716.843.3910 or [rpatterson@jaeckle.com](mailto:rpatterson@jaeckle.com) or Michele O. Heffernan at 716.843.3850 or [mheffernan@jaeckle.com](mailto:mheffernan@jaeckle.com).

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